IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1666 OF 1996

1. Tata Housing Development
   Company Ltd., a company
   incorporated under the
   provisions of the Indian
   Companies Act, 1913 and
   having its registered
   office at Bombay House,
   24, Homi Modi Street,
   Bombay-400 001.
2. Mr. Sharokh Ardeshir Sabavala
   of Bombay Indian Inhabitant
   having his office at Bombay
   House, 24, Homi Mody Street,
   Bombay-400 001. .... Petitioners

- Versus -

1. The State of Maharashtra
2. Controller of Accommodation,
   having his office at office
   of the Controller of Accommo-
   dation, Barack No.8, Free
   Press Journal Marg,
   Bombay-400 032.
3. The Accommodation Officer,

having his office at the
office of the Controller
of Accommodation, Barrack
No.8, Free Press Journal
Marg, Bombay-400 032.

4. Mrs. A. Markose of Bombay,
Indian Inhabitant residing
at Flat No.411 A Wing
Aradhana Co-operative
Housing Society Ltd.,
Naigaum, Bombay-400 14. .... Respondents

Sarvasri Percy D. Gandhi with R.J. Majra
i/b M/s. Wadia Gandhy & Co. for the
Petitioners.
Shri R.J. Mane, Asst. Government Pleader,
for the Respondent Nos.1 to 3.

CORAM: R.M.S. KHANDEPARKAR &
V.M. KANADE, JJ.

DATED: SEPTEMBER 19, 2005

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. By the present petition the petitioners are seeking delivery of possession of the premises which were requisitioned by the respondent Nos.1 to 3 for the occupation of their employee.

2. Few facts relevant for the decision are that the petitioners' tenement, situated at Tata Colony, G.D. Ambedkar Marg, Parel Tank Road, Mumbai was sought to be requisitioned in the year 1968. Subsequently the same was released in favour of the petitioners but on 7-10-1985 another premises, namely R-III/Aradhana-A Wing/411 being Flat No.411 at Aradhana were requisitioned under order of the same date issued in exercise of powers under Section 6(1) of the Bombay Land Requisition Act, 1948. The said flat was allotted in favour of the respondent No.4 herein by order dated 28-10-1985 issued by the Requisition/Allotment Officer. The respondent No.4 herein occupied the premises consequent to the said order of allotment immediately after issuance of the said order. The respondent No.4 retired from the Government services in May, 1992, however, continued to be in possession and occupation of the said flat even thereafter. Meanwhile, there was a fire at the corporate office of the petitioner No.1 at Eruchshaw building, 4th floor, D.N. Road, Fort, Mumbai wherein the records pertaining to the requisition of the said flat and the related documents were destroyed. The respondents having failed to vacate the premises and to deliver the possession of the premises to the petitioners in spite of the retirement of the respondent No.4 and no other Government employee having come to reside therein thereafter, nor there was any allotment

in favour of any other Government employee, the petitioners have filed the present petition seeking the relief as stated above.

3. The respondents on their part do not dispute the fact of requisitioning of the premises or the allotment of the flat for the occupation of the respondent No.4 under the order of 28-10-1985. It is also not disputed that the respondent No.4 retired from the Government services in May, 1992.

4. The learned Advocate for the petitioners, drawing attention to the decision of the Apex Court in **Maheshchandra Trikamji Gajjar v. State of Maharashtra and others,** reported in (2000) 3 SCC 295, submitted that it was the duty of the respondents to ensure delivery of vacant possession of the premises to the petitioners consequent to the retirement of the respondent No.4 since the premises were not required for allotment to any Government employee thereafter. The respondents having failed to comply with their obligation in that regard, the petitioners are left with no alternative than to seek necessary direction from this Court.

5. The learned Advocate A.G.P. appearing for the respondents, on the other hand, submitted that after the retirement of the respondent No.4 she was issued the necessary notice to vacate the premises, however, she

has failed to vacate the premises.

6. Once the requisitioned premises are not required for the purpose for which they were requisitioned or that the purpose for which the premises are requisitioned ceases to subsist, the authorities are duty bound to deliver the vacant possession of the requisitioned premises to the owner of the premises. In the case in hand, it is not disputed that the premises were allotted for the purpose of occupation of the Government employee under the Order dated 28-10-1985 and consequently the same were occupied by the respondent No.4. It is also not in dispute that the respondent No.4 retired in May, 1992 and yet the premises have not been vacated by the respondent No.4. The respondent No.4 having ceased to be in Government employment, she cannot be considered as a Government allottee and in that regard the petitioners' Advocate is justified in drawing attention to the decision of the Apex Court in **Maheshchandra's** case (supra). The Apex Court therein while rejecting the various defences sought to be raised, and considering the provisions of the rent legislation, had clearly held that when the accommodation is allotted to a Government employee, it is done so on account of his employment with the Government and he continues to have the right to occupy the premises till he is in the employment of the Government. Moment he ceases to be in the employment of the Government, he also ceases to have

the right to occupy the premises allotted to him. It was clearly held thus:-

> "It is evident that the accommodation or possession of the premises within the meaning of clause (b) by a person who when allotted was a government employee has to be on account of some right to occupy or possess the premises. The continued occupation or possession without any such right would not confer on the occupant the status of a government allottee simply on account of such person being in occupation or possession of the requisitioned premises even after retirement. The reason for authorities not taking any action to get such premises vacated is explainable on account of the said premises being not available for allotment again to any existing government servant."

The law being very clear on this aspect, it was necessary for the respondent No.4 to vacate the premises immediately after her retirement and within the statutory period which is available for the Government employee to vacate the premises after his retirement and on account of her failure to do so, it was obligatory

for the remaining respondents to take appropriate action to get the premises vacated by the respondent No.4 as the same being not required for allotment to any other Government employee, and to return the vacant possession thereof to the petitioners

7. It is not the case of the respondents that after the retirement of the respondent No.4, the premises in question were required to be allotted for occupation of any other Government employee. It is also not the case of the respondents that there was any order of allotment passed in relation to the premises in question in favour of any other Government employee for his/her occupation of the said premises. In the background of the above facts, therefore, the petitioners are justified in submitting that the respondents have failed in their obligation to ensure the return of the vacant possession of the said premises to the petitioners consequent to the retirement of the respondent No.4 and the premises being not required for the purpose for which they were requisitioned.

8. It is also the case of the petitioners that since 1992, after the date of retirement of the respondent No.4, no rent has been paid to the petitioners. It is the case of the respondent Nos.1 to 3 that they have recovered such rent from the respondent No.4 till the year 1996. The acts on the part of the respondents to

recover the rent from the respondent No.4 till the year 1996 may disclose tacit approval on the part of the other respondents for the occupation by the respondent No.4 of the said premises but the same would be contrary to the statutory provisions and therefore will not enure to the benefit of the respondent No.4 in any manner. Mere acceptance of rent from the person, not authorised, nor entitled to occupy the requisitioned premises will not bestow upon him/her the status of a tenant under the rent legislation, though the occupant, the respondent No.4 however, would be otherwise liable to compensate other respondents on account of their liability to pay the rent in relation to the premises to the owner thereof till the date of delivery of the vacant possession thereof. Undoubtedly, the premises being under the control of the respondents consequent to the order of requisition passed under the said Act, it would be the responsibility of the respondent Nos.1 to 3, to pay the rental charges for the premises to the petitioners till the date of delivery of the vacant possession thereof to the petitioners from the day from which the rent for the same has remained due and payable to the petitioners. Needless to say that the respondents shall be entitled to recover such amount from the respondent No.4 and/or the person/s who is/are responsible for delaying the eviction of the respondent No.4 from the premises after her retirement.

9. In the result, therefore, the petition succeeds. The respondents are directed to deliver the vacant and peaceful possession of the premises to the petitioners within a period of eight weeks from today along with the entire arrears of rent from the date it is due till the date of delivery of the vacant possession of the premises. Considering the fact that the premises have been retained contrary to the provisions of law and in spite of the fact that the same were not required and ignoring the specific direction issued in that regard by the Apex Court, the respondents shall also be liable to pay interest on the rental amount due and payable to the petitioners which shall be at the rate of 10% per annum from the day the amount had become due and payable till the date of payment of the entire dues.

10. The rule is made accordingly absolute in above terms with costs.

(V.M. Kanade, J.) **(R.M.S. Khandeparkar, J.)**